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October 23, 2021

BY ECF

The Honorable Norman K. Moon
United States District Court
Western District of Virginia
255 West Main Street
Charlottesville, VA 22902

Re: Sines et al. v. Kessler et al., No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

Plaintiffs write concerning the repeated complaints of Defendant Christopher Cantwell about his lack of access to documents and pleadings in this case as a result of his incarceration, including statements made by Mr. Cantwell yesterday at the final pretrial conference and continuing in a series of new submissions docketed today. *See, e.g.*, ECF Nos. 1056, 1063, 1084, 1098–99, 1102, 1109–10, 1122, 1159–60, 1162, 1253–57, 1261–63, 1273, 1290. This situation, as Your Honor has noted, is exacerbated by the fact that Mr. Cantwell is proceeding *pro se*. *See, e.g.*, ECF No. 1273. While Plaintiffs remain adamant that any further delay would be extremely prejudicial given the fact that this case was filed four years ago, jury questionnaires have already been sent out, and many parties, counsel, and witnesses are already in or on their way to Charlottesville, *see, e.g.*, ECF Nos. 1108, 1113, 1196, Plaintiffs are also aware that Mr. Cantwell likely will continue to assert these arguments, which could complicate the issues on appeal.

As a result, Plaintiffs have concluded that the best way to resolve the tension between the need to proceed to trial and Mr. Cantwell’s due-process arguments would be for the Court to sever Plaintiffs’ claims against Mr. Cantwell from their claims against the other Defendants in this case pursuant to Rule 21 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 21; *see Lee v. Jones*, No. 1:14-CV-04159-JMC, 2015 WL 3767347, at *3 (D.S.C. June 17, 2015) (“A court severing claims against parties to a suit under Rule 21 has ‘virtually unfettered discretion in determining whether or not severance is appropriate.’” (citation omitted)); *see also Mendez v. Leu*, No. 7:20-CV-00046, 2020 WL 534531, at *2 (W.D. Va. Feb. 3, 2020) (Moon, J.) (pre-trial severance is proper to “serve the interests of the parties and the interests of justice”); *Gregory v. FedEx Ground Package Sys., Inc.*, No. 2:10CV630, 2012 WL 2396873, at *10 (E.D. Va. May 9, 2012) (Rule 21 provides “broad discretion to structure cases in a manner that promotes fairness to

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the parties, trial convenience, and the efficient administration of justice”). That way, Plaintiffs can proceed to trial on Monday as scheduled and Mr. Cantwell can have additional time to prepare. Should the Court grant Plaintiffs’ request, Plaintiffs would proceed with trial against Mr. Cantwell at a later date which we believe would be much shorter in length and could potentially take place after Mr. Cantwell is no longer incarcerated. If the Court decides to sever Plaintiffs’ claims against Mr. Cantwell, Plaintiffs would request that they be able to designate portions of Mr. Cantwell’s video deposition testimony to be played at trial against the remaining Defendants.

Given the circumstances, Plaintiffs respectfully ask that the Court decide this issue before the beginning of jury selection on Monday, October 25, 2021.

Very truly yours,



Roberta A. Kaplan

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I hereby certify that on October 23, 2021, I served the following via electronic mail:

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I hereby certify that on October 23, 2021, I also served the following via mail and electronic mail:

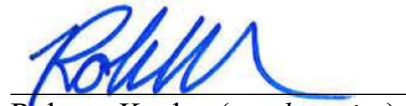
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